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No. 79-6825

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1979

WILL CATER, JR., Appellant

vs.

THE PEOPLE OF THE STATE OF ILLINOIS, Appellee

MOTION TO DISMISS OR IN THE ALTERNATIVE MOTION TO AFFIRM TO THE APPELLATE COURT OF ILLINOIS, THIRD JUDICIAL DISTRICT

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INTRODUCTION

The Appellee, People of the State of Illinois, move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Appellate Court of Illinois on the ground that it is manifest that the questions on which the decision of the cause depends are so unsubstantial as not to need further argument.

JURISDICTION

The jurisdictional requisites are adequately met as provided in 28 U.S.C. § 1257 (2). However, appellee submits that appellant has failed to submit a substantial federal question.

QUESTION PRESENTED

Whether the Illinois Juvenile Transfer Statute provides adequate procedural due process safeguards such as an articulated standard of evidence and guidelines for the relative weight to be given to the six statutory factors the Juvenile Court must consider before transferring a minor to Adult Court?

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> No state shall...deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of law.

The Illinois provision allowing for criminal prosecution of juveniles, Ill. Rev. Stat., 1977, Ch. 37, § 702-7, provides in pertinent part:

> (1) Except as provided in this Section, no minor who was under 17 years of age at the time of the alleged offense may be prosecuted under the criminal laws of this State or for violation of an ordinance of any political subdivision thereof...
>
> (2) If a petition alleges commission by a minor 13 years of age or over of an act which constitutes a crime under the laws of this State, and, on motion of the State's Attorney, a Juvenile Judge, designated by the Chief Judge of the Circuit to hear and determine such motions, after investigation and hearing but before commencement of the adjudicatory hearing, finds that it is not in the best interests of the minor or of the public to proceed under this Act, the court may enter an order permitting prosecution under the criminal laws.
>
> (a) In making its determination on a motion to permit prosecution under the criminal laws, the court shall consider among other matters: (1) whether there is sufficient evidence upon which a grand jury may be expected to return an indictment; (2) whether there is evidence that the alleged offense was committed in an aggressive and premeditated manner; (3) the age of the minor; (4) the previous history of the minor; (5) whether there are facilities particularly available to the Juvenile Court for the treatment and rehabilitation of the minor; and (6) whether the best interest of the minor and the security of the public may require that the minor continue in custody or under supervision for a period extending beyond his minority. The rules of evidence shall be the same as under Section 5-1 of this Act, but no hearing on such motion may be commenced unless the minor is represented in court by counsel. (b) If criminal proceedings are instituted, the petition shall be dismissed insofar as the act or acts involved in the criminal proceedings are concerned. Taking of evidence in an adjudicatory hearing in any such case is a bar to criminal proceedings based upon the conduct alleged in the petition.

STATEMENT OF THE CASE

Appellee adopts appellant's statement of facts.

REASONS FOR GRANTING THE MOTION TO DISMISS OR IN THE ALTERNATIVE TO AFFIRM

I.

THE ILLINOIS JUVENILE TRANSFER STATUTE DOES PROVIDE ADEQUATE PROCEDURAL DUE PROCESS ENUMERATED IN THE SIX CRITERIA.

The starting point for any constitutional analysis of juvenile transfer statutes is this Court's decision in Kent v. United States, 383 U.S. 541 (1966). Recognizing the "critically important" nature of the transfer proceedings to the juvenile, this Court held that certain procedural safeguards must attend a decision to transfer:

> [W]e conclude that, as a condition to a valid waiver order, petitioner was entitled to a hearing, including access by his counsel to the social records and probation or similar reports which presumably are considered by the court; and to a statement of reasons for the Juvenile Court's decision. We believe that this result is required by the statute read in the context of constitutional principles relating to due process and the assistance of counsel. (383 U.S. at 557)

Although the Kent decision was decided primarily on statutory construction, the suggestion that the safeguards outlined there were guaranteed by due process was reinforced by a subsequent reference to Kent in In re Gault, 387 U.S. 1, 30 (1967). As the United States Court of Appeals for the Fourth Circuit has said:

> Whether Gault and Kent, taken together, form a constitutional imperative as to juvenile waiver proceedings is not self-evident. However, Kent and Gault do make it unquestionably clear that juvenile court proceedings that affect a young person's substantial rights "must measure up to the essentials of due process and fair treatment." [In re Gault (1967), 387 U.S. 1, 30, 87 S.Ct. 1428, 1445, 18 L.Ed.2d 527, 548].

Kemplen v. Maryland, 428 F.2d 169 (4th Cir. 1970), at 173.

In Mathews v. Eldridge, 424 U.S. 319 (1976), this Court listed three factors as being relevant in determining the requirements of due process in a given case:

> First, the private interest that will be affected by the official action; second, the risk of an erroneous deprivation of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and finally, the Goverment's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. 424 U.S. at 336.

The Illinois statute challenged here became effective on October 1, 1973. Under prior law, transfer of juveniles to criminal court had been largely a matter of prosecutorial discretion. (Ill. Rev. Stat., 1971, Ch. 37, par. 702-7 (3); People v. Sprinkle, 56 Ill.2d 257, 307 N.E.2d 161 (1974).) Unlike the prior law, the present statute closely parallels the District of Columbia transfer statute as interpreted by this court in Kent. Indeed the council commentary to the new provision indicates that the statute was amended in response to the Kent decision. (Ill. Ann. Stat., Ch. 37, par. 702-7, Council Commentary, at 81 (Smith Hurd Supp. 1979).) The six criteria that the statute sets out for the judge to consider closely follow the District of Columbia criteria set out in an appendix to the Kent opinion. (383 U.S. 541, 566, 86 S.Ct. 1045, 1060, 16 L.Ed.2d 84, 100.) Again the council commentary notes that, although prior law had not specified such standards, "[c]riteria for transfer suggested by the Kent case are now listed in the section." (Ill. Ann. Stat., Ch. 37, par. 702-7, Council Commentary, at 81 (Smith-Hurd Supp. 1979).)

In the present case the appellant contends that his transfer to adult court for prosecution under the Illinois Transfer Statute, Ill. Rev. Stat., Ch. 37, § 702-7 (3) (1973), denied him due process because the statute is vague because it does not state the standard of evidence to be applied and lacks sufficient procedural safeguards to prevent arbitrary transfers. Specifically he attacks the statutory standards because they (1) lack adequate due process within the six criteria established in the transfer statute; (2) do not articulate a standard of evidence, or the weight to be applied to the various statutory criteria. Two identical claims were raised in People v. Taylor, 76 Ill.2d 289, 391 N.E.2d 366 (1979),

and the court ruled that the Juvenile Transfer Statute did provide adequate procedural due process to a juvenile being adjudicated as either an adult or juvenile, and that an articulate standard of evidence and weight to be applied to each step was not necessary. In the case at bar, the appellant is trying to initiate a rehearing of some of the same issues that were brought forth in the Taylor case.

The similarity of the Illinois statute to the District of Columbia Act as modified by this Court to comport with due process requirements clearly demonstrates that the Illinois statute is constitutionally adequate, and as held by the Illinois Supreme Court in Taylor, that it adequately safeguards appellant's procedural due process rights.

In addressing appellant's attack upon the constitutionality of the Illinois Juvenile Transfer Statute, the Third District Appellate Court relied exclusively upon the recent opinion of the Illinois Supreme Court in Taylor. In this regard the Appellate Court simply stated:

> The Illinois Supreme Court in Taylor interpreted the juvenile transfer statute, as adopted by the legislature in response to the case of Kent v. U.S., (1966), 383 U.S. 541, 86 S.Ct. 1045, 16 L.Ed.2d 84, as satisfying the constitutional requirements of due process. The Taylor opinion clearly recites the law on the multiple subissues argued by defendant Cater in claiming the statute here is unconstitutional. We adhere to the reasoning espoused in the Taylor opinion and conclude as the Supreme Court did that the transfer statute (Ill. Rev. Stat. 1977, ch. 37, par. 702-7) is constitutional. 78 Ill. App.3d at 985, 398 N.E.2d at 30-31.

It should be noted that the standards of Kent and of the Illinois statute require judicial discretion to be exercised within clear and objective standards which produces nondiscriminatory application. The only court which has considered the sufficiency of the present Illinois transfer statute has rejected the argument that the standards are ambiguous, holding that they are "specific enough to satisfy due process." United States ex rel. Pedrosa v. Sielaf, 434 F.Supp. 493, 497 (N.D. Ill. 1977).

TRANSFER HEARING IS NOT AN ADVERSARY HEARING

As held in Taylor, appellant could not claim he was denied due process because the transfer statute did not require the judge to state his reasons for ordering transfer or that the transfer hearing is adjudicatory in nature. The statute recognizes the hearing as dispositional in nature, determining the forum in which guilt or innocence is to be adjudicated. Taylor at 372. Faced with the same issue, the Supreme Court of Washington, in State v. Piche, 74 Wash.2d 9, 442 P.2d 632 (1968), cert. denied 393 U.S. 1041, 21 L.Ed.2d 588, 89 S.Ct. 666 (1969), stated:

> In determining whether the essentials of due process and fair treatment were provided in the instant case, it is important to keep in mind the exact nature of a juvenile court transfer hearing. Such a hearing does not result in a determination of delinquency ...; does not result in a determination of guilt as may a criminal trial; and does not directly result in confinement or other punishment as may both a delinquency hearing and a criminal proceeding. In short, the transfer hearing is not an adversary proceeding. Rather, the sole purpose of the transfer hearing, as we have recently said, is to determine 'whether best interests of the child and of society would be served by the retention of the juvenile court authority over him or whether the juvenile, under all the circumstances, should be transferred to be tried as an adult.' [Citation] We believe that this purpose may best be effectuated by the sound exercise of the juvenile court judge's discretion at an informal hearing, limited of course by the general requirements of due process and fair treatment, but not governed by the strict rules of procedure and evidence applicable at either a criminal trial or at a juvenile court delinquency hearing. (74 Wash.2d at 14, 442 P.2d at 635-636)

In Clemons v. State, 162 Ind. App. 50, 58-60, 317 N.E.2d 859, 864-65 (1974) the Indiana Appellate Court found the transfer determination by the juvenile judge to be analogous to the decision making performed by a trial judge in sentencing, since in both situations "consideration must be given to such factors as the previous record, background and possibility of rehabilitation of the individual before the court." See also State v. Carmichael, 35 Ohio St.2d 1, 298 N.E.2d 568 (1973); In re

II.

FAILURE TO HAVE AN ARTICULATED STANDARD OF EVIDENCE AND GUIDELINES FOR THE RELATIVE WEIGHT TO BE GIVEN TO THE SIX CRITERIA DOES NOT DEPRIVE THE APPELLANT OF HIS PROCEDURAL DUE PROCESS RIGHTS UNDER THE FOURTEENTH AMENDMENT.

The Illinois Supreme Court in Taylor rejected the contention that a standard of proof by "clear and convincing evidence" was constitutionally required, and also rejected the argument that due process required an articulated standard of evidence at a juvenile transfer hearing. In reaching this decision, the Court in Taylor compared the juvenile transfer procedure to a sentencing type procedure. The Court stated:

> [T]he State need only present evidence sufficient to persuade the trial court, in the sound exercise of its discretion, that in light of the statutorily prescribed criteria transfer is warranted. 391 N.E.2d at 372.

Since the juvenile transfer procedure is only a hearing the standard of evidence should not be the same as required at trial. The purpose of the Juvenile Transfer Hearing is not to determine the defendant's guilt or innocence, but whether to adjudicate him as a juvenile or adult.

Establishing guidelines to determine the relative weight to be applied to each of the six criteria is not appropriate as long as the final decision by the judge is supported by the six criteria under the Juvenile Transfer Statute. Since the purpose and results of a transfer hearing is not at all similar to those of an adjudicatory hearing, the transfer hearing need not and should not be limited in the manner urged by the appellant. In rejecting the appellant's contention the Appellate Court stated:

> Fundamental fairness does not require the juvenile judge to exercise his discretion with any degree of mathematical certainty. Not all of the factors set forth in the transfer statute need be resolved against the juvenile to justify a waiver of juvenile court jurisdiction. [People v. Taylor, (1979), 76 Ill.2d 289, 39 Ill. Dec. 103, 391 N.E.2d 366)]. We agree with the holding in Taylor, '[t]hat under our [present] statute the State need only present evidence sufficient to persuade the trial court, in the sound

> exercise of its discretion, that in light of the statutorily prescribed criteria transfer is warranted.' [76 Ill.2d at 303, 304, 29 Ill. Dec. at 109, 391 N.E.2d at 372]. The record manifestly supports the trial judge's finding that it was not in the best interest of the minor and the public to proceed under the juvenile court act, but that the best interest of the minor and the security of the public required that the minor defendant continue in custody for a period extending beyond his minority. The trial court did not abuse its discretion in permitting the criminal prosecution in the present case. [People v. Cater, 398 N.E.2d 28, 32.]

Furthermore in Taylor, at 373, the Court stated that the United States Supreme Court has recognized the constitutionality of the exercise of judicial discretion and lack of formal procedure inherent in the juvenile transfer proceeding. In Kent the court observed of the statute that it upheld:

> The statute gives the Juvenile Court a substantial degree of discretion as to the factual considerations to be evaluated, the weight to be given them and the conclusion to be reached. (383 U.S. 541, 553, 86 S.Ct. 1045, 16 L.Ed.2d 84, 93.)

In Taylor, 371-372, the defendant contended that the transfer statute denied him due process by failing to articulate a standard of evidence, by prescribing for transfer hearings the relaxed rules of evidence used at dispositional hearings, and by failing to specify a formula according to which the judge must weigh the six criteria that the statute lists for his consideration. The statute provides that "[t]he rules of evidence shall be the same as under Section 5-1 of this Act" (Ill. Rev. Stat. 1975, ch. 37, par. 702-7 (3) (a)), and the council commentary refers, albeit with a typographical error, to the same section for the standard of proof. Section 5-1 provides:

> After adjudging the minor a ward of the court, the court shall hear evidence on the question of the proper disposition best serving the interests of the minor and the public. All evidence helpful in determining this question, including oral and written reports, may be admitted and may be relied upon to the extent of its probative value, even though not competent for the purposes of the adjudicatory hearing. (Ill. Rev. Stat. 1975, ch. 37, par. 705-1 (1).)

In Breed v. Jones, 421 U.S. 519 (1975), at 537, this court in reviewing its prior decisions affecting transfer hearings stated:

> ...[T]he Court has never attempted to prescribe criteria for, or the nature and quantum of evidence that must support, a decision to transfer a juvenile for trial in adult court. (Emphasis supplied.)

Indeed, five years prior to its decision in Breed, when this court decided that due process required proof beyond a reasonable doubt before a juvenile could be adjudicated delinquent, it specifically declined to apply that requirement to the pre-adjudicatory stages of juvenile proceedings, and indicated that the holding would not affect the "wide-ranging review of the child's social history." In re Winship, 397 U.S. 358 (1970), at 366-367.

Since the Illinois Supreme Court has affirmed in Taylor that the appellant received adequate procedural due process provided by the Illinois Juvenile Transfer Statute, as guided by this Court's decisions in Kent and In re Gault and Mathews v. Eldridge; the appellant in the case at bar has received the minimum requirement of procedural due process and therefore appellant's arguments have clearly failed to bring forth a substantial federal question.

CONCLUSION

Wherefore, Appellee respectfully submits that the questions upon which this cause depends is so unsubstantial as not to need further argument, and Appellee respectfully moves the Court to dismiss this appeal, or in the alternative, to affirm the judgment entered in the cause by the Appellate Court of Illinois, Third Judicial District.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Thomas E. Holum, a member of the bar of this Court and representing Appellee in this cause, certify:

1.) That I have served one copy of the Motion to Dismiss Or In The Alternative Motion to Affirm to the Appellate Court of Illinois, Third Judicial District, by depositing such copy in the United States mail at 160 North LaSalle Street, Chicago, Illinois 60601, with the proper postage affixed thereto, and with the envelope addressed as follows:

Robert Agostinelli
Deputy Defender
Office of the State Appellate Defender
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2.) That all parties required to be served have been served.

Date: _____

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